

Division Circular #40
(N.J.A.C. 10:48A)

DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: June 2, 2003

DATE ISSUED: June 17, 2003

(Rescinds Division Circular #40, "Background Checks" issued January 9, 2003)

I. TITLE: BACKGROUND CHECKS

II. PURPOSE: To establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities.

III. SCOPE: Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the persons served by the agency. Such employees include, but are not limited to, consultants, interns and seasonal employees.

IV. GENERAL STANDARDS:

The remainder of this circular is the background check rule as it appears at N.J.A.C. 10:48A.

10:48A-1.1 Purpose

The purpose of this subchapter is to establish guidelines for obtaining criminal history background checks of employees of agencies under contract with the Division of Developmental Disabilities.

10:48A-1.2 Scope

Background checks shall be conducted for those employees of agencies under contract with the Division, working in such contracted programs, who have direct contact with the persons served by the agency. Such employees include, but are not limited to, consultants, interns and seasonal employees.

10:48A-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

“Community agency” means a public or private agency under contract with the Department to provide services to Department individuals who have developmental disabilities.

“Community agency board” means the board of directors of a community agency.

“Community agency employee” means any individual, age 18 and older, who is employed by a public or private agency under contract with the Department to provide services to Department individuals who have developmental disabilities, and includes all personnel who may come into direct contact with individuals who have developmental disabilities.

“Community agency head” means the person responsible for the overall operation of the agency under contract with the Department.

“DHS Coordinator” means the staff member in the Department of Human Services Central Fingerprint Unit (CFU) who advises the agency of the results of the criminal history background checks.

“Division” means the Division of Developmental Disabilities.

SUBCHAPTER 2. ADMINISTRATION

10:48A-2.1 General standards

(a) N.J.S.A. 30:6D-63 to 72 requires that the Department shall not contract with any community agency for the provision of services unless it has first been determined that no criminal history record information exists on file in the Federal Bureau of Investigation Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the community agency head or the community agency employee from such employment.

(b) Fingerprints shall be taken electronically through a “live scan” process. The agency staff shall be responsible to call a toll free number to schedule an appointment to have fingerprints taken. The State Bureau of Identification will check its own records and forward an inquiry to the Federal Bureau of Investigation.

(c) It shall be the responsibility of the community agency head to assure compliance with this chapter.

(d) If the criminal history record indicates a conviction for certain criminal or disorderly persons offenses, the employee shall be terminated from employment unless he or she affirmatively demonstrates to the community agency head or the community agency board, if the individual is the community agency head, clear and convincing evidence of his or her rehabilitation.

(e) If a prospective employee refuses to consent to or cooperate in securing a background check, the person shall not be considered for employment.

(f) If a current employee refuses to consent to or cooperate in securing fingerprints for the purpose of a background check, the person shall be immediately removed from his or her position and the person’s employment shall be terminated.

(g) A background check shall be conducted at least once every two years.

(h) The community agency head and all employees, who may come in contact with persons served by the agency, shall submit their fingerprints upon employment to the Department of Human Services office as directed by the Division.

(i) If the background check of the community agency head reveals a criminal record as identified below, the community agency board shall determine within

15 working days, if the community agency head has been rehabilitated in accordance with N.J.A.C. 10:48A-3.4.

(j) The community agency head shall ensure that each employee who may come in contact with persons served by the agency shall be fingerprinted in accordance with the procedures contained in this chapter.

(k) All employees shall sign a written consent to the criminal background check (refer to chapter Appendix A, incorporated herein by reference) prior to the time the fingerprints are taken. This consent shall remain on file in the agency.

(l) Individuals shall be disqualified for employment for any of the following crimes or disorderly persons offenses in New Jersey:

1. Any crime or disorderly person offense involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq. including the following:
 - i. Murder;
 - ii. Manslaughter;
 - iii. Death by auto;
 - iv. Simple assault;
 - v. Aggravated assault;
 - vi. Recklessly endangering another person;
 - vii. Terroristic threats;
 - viii. Kidnapping;
 - ix. Interference with custody of children;
 - x. Sexual assault;
 - xi. Criminal sexual contact;
 - xii. Lewdness; or
 - xiii. Robbery;

2. Any crime against children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq., including the following:
 - i. Endangering the welfare of a child; or
 - ii. Endangering the welfare of an incompetent person;
3. A crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 24:21-1 et seq.; or
4. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in (l) 1 through 3 above.

SUBCHAPTER 3. PROCEDURES

10:48A- 3.1 Fingerprints

- (a) The community agency head or employee shall make an appointment within 10 working days of employment to have his or her fingerprints taken through the live scan process with an agent designated by the Department of Human Services.
- (b) At the time the fingerprints are taken, the employee is required to:
 1. Complete the Community Agency Head and Employee Certification, Permission for Background Checks and Release of Information (see Appendix A) which will be witnessed by a representative of the community agency. The community agency shall retain the consent with the employee's personnel information;
 2. Obtain a receipt from the representative of the agency taking the fingerprints that they have been taken;
 3. Return the receipt to the Community Agency Head or designee; and
 4. If the prints are rejected by the State Police or FBI as unclassifiable, make an appointment to be reprinted within 10 days of notification that the prints are rejected.

- c. After the fingerprint results are received:
1. The DHS Coordinator shall review the results and determine what may be released to the agency. The DHS Coordinator shall do a separate notification for the results received from the State Police and Federal Bureau of Investigation.
 2. In the case of an agency employee, the Department shall convey in writing the results of the review to the community agency head. The community agency head shall notify the individual in writing of his or her qualification or disqualification. The conviction(s), which constitutes the basis for the disqualification, shall be identified in the written notice.
 3. If the fingerprints are rejected twice, the State Police shall check the name, date of birth and social security number and forward the results to the DHS Coordinator. The Department of Human Services will, at the same time, request a similar search by the FBI on all prints rejected twice.
 4. In the case of a community agency head, the DHS Coordinator shall convey, in writing, the results of the review to the Director of the Division of Developmental Disabilities. The Director will advise the board president in writing. If there is a record of conviction involving one of the offenses listed in N.J.A.C. 10:48A-2.1(l), the board of directors shall advise the community agency head in writing of his or her continued employment or termination. The Division Director shall be provided a copy of the letter from the board of directors.

10:48A-3.2 Background checks

- (a) The DHS Coordinator shall assign each community agency an identification number.
- (b) The confidential results of all criminal history background checks shall be maintained in a database by the DHS Coordinator.
- (c) The community agency shall be responsible to keep the information obtained regarding employees in a confidential and secure manner. The records are not public.

10:48A-3.3 New employees

(a) The employee shall be responsible to make an appointment to have his or her fingerprints taken within 10 working days of employment.

(b) A new employee may be provisionally employed by the community agency for a period of up to six months pending the completion of a criminal history background check if the individual provides a sworn statement to the executive director attesting that he or she has not been convicted of any crimes or disorderly person offense(s) described in this procedure. (See Appendix A).

(c) If the new employee indicates that he or she has been convicted of a crime or disorderly person offense(s) as described in this chapter, he or she may not be employed unless the community agency head determines that the applicant has affirmatively demonstrated clear and convincing evidence of his or her rehabilitation in accordance with N.J.A.C. 10:48A-3.4.

(d) An individual who is provisionally employed shall, where possible, perform his duties under the supervision of a superior who acts in a supervisory capacity over that individual until the determination concerning the Federal and State criminal background check is completed.

10:48A-3.4 Rehabilitation

(a) No individual shall be disqualified from employment on the basis of any conviction if the individual has affirmatively demonstrated to the community agency head, or the community agency board, if the individual is the community agency head, clear and convincing evidence of his or her rehabilitation.

(b) In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

1. The nature and responsibility of the position which the convicted individual would hold, has held or currently holds;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the individual when the offense was committed;

6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
and
8. Any evidence of rehabilitation including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of those who have had the individual under their supervision.

(c) The community agency head shall make a determination regarding the employment of the individual. That determination shall be kept on file at the community agency.

(d) The community agency board, in the case of the community agency head, shall make a determination regarding the employment of the community agency head. That determination shall be kept on file at the community agency and a copy shall be sent to the Division Director.

10:48A-3.5 Subsequent offenses

(a) All employees shall be advised in writing that they are responsible to notify the community agency head of any criminal charges related to the offenses listed in this chapter subsequent to the background check.

(b) In the case of the community agency head, he or she shall be responsible to notify the Division Director and the community agency board in writing of any criminal charges subsequent to the background check. The community agency head shall provide a copy of that notification to the Division Director and the determination regarding continued employment of that individual.

(c) The State Police will notify the Department in the event an individual who was the subject of a criminal history background check is arrested or convicted of a crime or offense in New Jersey after the date that the criminal history background check was performed. The Department shall advise the community agency head regarding the staff's subsequent arrest or conviction. If the community agency head is subsequently arrested or convicted, the DHS Coordinator shall notify the Division Director. The Division Director will then notify the community agency board, who shall make a determination regarding the employment of the individual.

(d) A background check shall be conducted at least once every two years. The Department may determine an alternative means to identify an individual

who has been convicted of an offense covered in this procedure. This may include, but not be limited to, a match of a person's Social Security number or other identifying information.

10:48A-3.6 Monitoring

(a) Annually, at the time of the contract renewal with the Division, all contract community agencies shall certify in writing to the Division Director that they are in full compliance with N.J.S.A. 30:6D-63 to 72 regarding background checks for community provider agencies.

(b) The community agency shall develop written policies regarding background checks that shall include a process whereby the employee may appeal the community agency's decision regarding employment.

(c) All community agency records regarding criminal history background checks shall be available for review by Department and Division staff to assure compliance with this procedure.

10:48A-3.7 Appeals

(a) If the employee is disqualified, the community agency head shall advise him or her of the right to appeal. The employee shall have 30 days from receipt of the notice of disqualification for employment to request an appeal.

(b) The appeal shall be to the community agency head, who shall make a determination based upon a review of the information on record including any information regarding rehabilitation. The community agency head shall advise the employee that any appeal of his or her determination shall be made to New Jersey Superior Court.

(c) If the community agency head is disqualified and files an appeal, the community agency board shall review the record including any information regarding rehabilitation and make the determination. The community agency board shall advise the community agency head in writing that any appeal of its determination shall be made to New Jersey Superior Court.

James W. Smith, Jr., Director
Division of Developmental Disabilities

APPENDIX A

COMMUNITY AGENCY HEAD AND EMPLOYEE CERTIFICATION, PERMISSION FOR BACKGROUND CHECK AND RELEASE OF INFORMATION

I hereby authorize the Department of Human Services to conduct a criminal history background check and I agree to be fingerprinted in order to complete the state and federal background check process. I further authorize the release of all information regarding the results of my background check to the Department of Human Services. Check one of the options listed below.

Option 1 _____ I hereby certify under penalties of perjury, that I have not been convicted of any of the offenses listed below and no such record exists in the State Bureau of Identification in the Division of State Police or in the Federal Bureau of Investigation, Identification Division.

Option 2 _____ I hereby affirm that I have been convicted of the following offense listed below _____
on _____.
(date)

If I have checked Option 2 or the criminal history background check reveals any conviction(s) for the offenses listed below, I understand that I may be subject to termination from employment.

FOR PROVISIONAL EMPLOYEES ONLY: As a provisional employee, I further understand that I may be employed by the agency for a period not to exceed six (6) months during which time a background check will be completed. I understand that I will work under the supervision of a superior where possible.

Offenses covered under P.L. 1999, C. 358:

In New Jersey, any crime or disorderly person offense:
-involving danger to the person as set forth in N.J.S.A. 2C:11-1 et seq. through 2C:15-1 et seq. including the following:

- i. Murder

- ii. Manslaughter
- iii. Death by auto
- iv. Simple assault
- v. Aggravated assault
- vi. Recklessly endangering another person
- vii. Terroristic threats
- viii. Kidnapping
- ix. Interference with custody of children
- x. Sexual assault
- xi. Criminal sexual contact
- xii. Lewdness
- xiii. Robbery

-against the children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq. including the following:

- i. Endangering the welfare of a child
- ii. Endangering the welfare of an incompetent person

-a crime or offense involving the manufacture, transportation, sale, possession or habitual use of a controlled dangerous substance as defined in N.J.S.A. 2C:24-1 et seq.

-in any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described above.

FOR COMMUNITY AGENCY HEAD: I understand the results of this background check will be reported to the President of the Board of my agency.

PLEASE LIST THE NAME AND HOME OR BUSINESS ADDRESS OF THE BOARD PRESIDENT.

Employee Name (please print)

Employee Signature

Date

Witnessed by (please print)

Witness Signature

Date